

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

12

DECISION

TOPIC

Notice of Intended Action - amendment to rule regarding department evaluation; denial of or condition of construction permits or disapproval or modification of MMPs for confinement feeding operations.

The purpose of the proposed amendment is to extend the department's authority to evaluate construction permit applications and manure management plans for impact on natural resources or the environment and to prohibit construction in the proposed location or to deny or condition/modify applications or plans that are reasonably expected to result in specified impacts. The amendment will potentially increase the requirements necessary to obtain a construction permit or approval of a manure management plan, but also provides the opportunity to challenge the department's action in a contested case proceeding.

Jeffrey R. Vonk, Director
Iowa Department of Natural Resources

January 3, 2006

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendment would authorize the Director to condition or deny a construction permit, to modify or disapprove a manure management plan, or to prohibit construction of a proposed confinement feeding operation at the proposed location if the Director concludes, after an evaluation by the Department, that the proposed confinement feeding operation or proposed expansion of a confinement feeding operation would reasonably be expected to cause: pollution of a water of the state; violation of state water quality standards; or an unreasonable burden on natural resources or the environment due to the current concentration of confinement feeding operations or associated manure application fields in a specific area.

Any interested person may make written suggestions or comments on the proposed amendment on or before _____. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895; email gene.tinker@dnr.state.ia.us.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

(one hearing in Wallace Building and three additional hearings in NW, North Central, and SE parts of state)

At the hearings people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 459.103, 459.303 and 459.312.

The following amendment is proposed.

Amend rule 65.5(459) by adding new subrule (3), as follows:

65.5(3) The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan, with respect to its potential adverse impacts on natural resources or the environment. The department shall consider the following factors:

1. The likelihood manure will be applied to frozen or snow-covered cropland.
2. The proximity of the structures or manure application areas to sensitive areas, including but not limited to publicly-owned land, designated areas, trout streams and karst terrain.
3. Topography, slope, vegetation, potential means or routes of conveyance of manure spilled or land-applied. This factor includes but is not limited to whether the manure application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether manure for land application is hauled or otherwise transported more than 5 miles.
4. Whether the operation or manure application area is or will be located in a 2-year capture zone for a public water supply.

In addition to the requirements in rules 65.9(455B), 65.10(455B), 65.11(455B), 65.15(455B) and 65.17(459), the department may deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from this evaluation that the operation would reasonably be expected to result in any of the following impacts:

1. Manure from the operation will cause pollution of a water of the state.
2. Manure from the operation will cause a violation of state water quality standards.
3. An unacceptable burden on natural resources or the environment in a specific area due to the current concentration of confinement feeding operations or the associated manure application areas.

The department also may establish permit conditions or require amendments to the manure management plan in addition to the minimum requirements established for such operations, on

the location of structures or manure application, or other operational conditions necessary to avoid or minimize the adverse impacts. A construction permit denial or condition, a manure management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561-Chapter 7.

Date

Jeffrey R. Vonk, Director